

### **REMARKS**

This Amendment is being filed in response to the Office Action mailed on May 4, 2004, and is timely filed. Claims 1-97 are currently pending in this application and stand rejected. Applicants respectfully request reconsideration and allowance of the pending claims in the present application in view of the amendments and remarks below.

The Examiner has rejected claims 1-97 under the judicially created doctrine of double patenting. Applicants traverse this rejection but have submitted a Terminal Disclaimer herewith. Accordingly, Applicants respectfully request a withdrawal of this rejection.

The Examiner has rejected all claims 1-97 under 35 U.S.C. 103(a) as being unpatentable in view of *Stainmesse* in view of *Cima* (U.S. Publication No. 2002/0048610 A1). *Cima* was published on April 21, 2002 and claims priority to a provisional application filed on January 7, 2000. Thus, *Cima* is prior art under 35 U.S.C. 102(e). Applicants have attached a Declaration under 37 C.F.R. 1.131 of a joint inventor Mark Doty averring that he conceived the claimed invention prior to January 7, 2000, and worked on this matter diligently thereafter. Accordingly, *Cima* should be excluded as a reference by virtue of this Declaration. Further, the Examiner cannot rely on a combination of *Stainmesse* and *Cima*, and, therefore, Applicants respectfully request a withdrawal of this rejection.

The Examiner has also rejected claims 60-65 under 35 U.S.C. 103(a) in view of *Stainmesse* and *Hanna*. Neither *Stainmesse* nor *Hanna* disclose using homogenization or other energy addition techniques specified in these claims as amended, and, therefore, this combination fails to make a prima facie case of obviousness. Accordingly, Applicants respectfully request a withdrawal of this rejection.

**Conclusion**

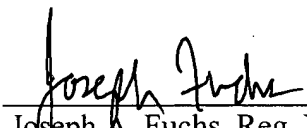
In view of the foregoing, Applicants submit the claims are in condition for allowance and respectfully request an early notice of the same.

Respectfully submitted,

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